INSEAD **New Ventures Course**

Intellectual Property Rights

An Introduction

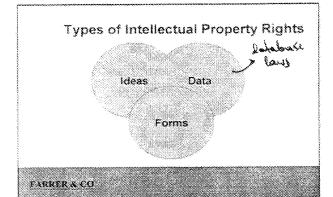
Peter Wienand Farrer & Co

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Intellectual Property Rights - the ground rules

- Reward for innovation
- Essentially negative: to stop pirates, plagrarists and counterfeiters
- Not needed to exploit products effective exploitation is not dependent on protection
- Are subject to public law
- Territoriality (no intl law) part of motional laws

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Types of intellectual property rights

- Patents
- Confidentiality
- industrial designs autistic work inhealthal
- Databases La welkilu
- Trade Marks

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Patents

Confer monopoly in return for disclosure

Granted for an invention, provided that:

* it is only - not part of the state of the art -ie not matter made available to the public.

- d involves an <u>inventive</u> step non-obvious to a person swilled in the art
- it is capable of <u>sidustrial</u> application
- it is not excluded by broad Lewe

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Patents - exclusions

- A discovery, scientific theory or mathematical method (eg laws of nature)
- A literary, dramatic, musical or artistic work or an aesthetic creation (protected by copyright)

A scheme, rule or method for a mental act. < \(\) \(

Computer programs (but see VICOM)

La Compaler-cirled design

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Patents - exclusions (cont'd)

- ◆ The presentation of information / de
- Anything encouraging offensive, antisocial or immoral behavious
- Ammal or plant varieties or biological processes (microbiological varieties or processes not excluded)
- Treatments of the human or animal body (therapies rather than substances)

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Patents - examples

- Classic patentable inventions:-jet engine radar; polyethylene; television; polyester fibres; semi-synthetic penicillins; printed circuits
- New areas variety of Basmati rice; Brazzein: Neem free patents; computer-aided design (CAD); on-line book ordering

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Obtaining a patent - procedure

- ◆ UK Patent Office national patent
- European Patent Office (EPO) independent of the large and patent designating the countries in
- which protection sought
- Community Patent (1723) with which
 Patent Co-operation Treaty (PCT)
 - International patent file in UK and examined in overseas patent offices
- Patent Law Treaty (PLT):

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Obtaining a patent - who applies

- Anyone but a patent is only granted to
 - * the inventor
 - the employer in the case of inventions made in the course of employment
 - * someone entitled to the grant under foreign law
- The patent or the application can then be assigned

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Obtaining a patent - procedure

not clear other will

- The specification ;
 - description clear and complete disclosure
 - · Claims: delimiting scope of menopoly
- Priority
 - 32 months to refine the specification
- ◆ Examination
- Opposition

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Exploiting patents

use

- Term 20 years from filing (renewal fees)
- * Preventing intringement ~ exceptor: our al
 - making disposing of, offering to dispose of, using, importing the product or using the process
- Licensing
- Compulsory licensing (no exploitation)

tribunal to determine fees

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Confidentiality

- Ideas
 - "identifiable, original, of potential commercial attractiveness"
 - secrecy
- ◆ "Know-how" (eg surrounding a patent).
- No time fimits
- Reliance on contractual enforcement

non-disclosure agreement

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What is protected?

- literary, dramatic, musical and artistic works.
- computer programs are literary works
- sound recordings
- ♦ films
- broadcasts and cable programmes:
- published editions

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Conditions for protection

- originality low threshhold (but depends on country)
- recorded in writing or otherwise
- ◆ qualification national status
- no need to register

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Exploiting copyright

Copyright

- Long period of protection
- Ownership
 - author
 - * employees
- ◆ Dealings in copyright
 - * assignments
 - Rognoes
- Preventing infringements

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Industrial Designs

- Protect appearance of mass-produced articles
- Registration for new designs with 'eye appeal'
- · Copyright for artistic designs
- Design right' for original technical designs.

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Registered Designs

- Z5.years' protection
- No protection for methods or principles of construction.
- No protection for functional features or features which depend on the appearance of another article (car doors)
- Infringement is by making articles to the design: a monopoly (no proof of dopying required).

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Copyright

- Still applies to designs or design documents recording designs for artistic works
- Still applies to artistic works which are industrially exploited, but protection is reduced to 25 years (as for registered designs)

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'Design Right'

- 15 years' protection (10 of which full)
- No registration required
- No protection for:
 - * methods or principles of construction:
 - functional features or features which depend on the appearance of another article (car doors)
 - surface decoration
- Infringement by copying

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Industrial designs - the future

- Directive parmonising national laws
 - applies to registered designs:
 - * must be explemented by 28,13-01
- Community design:

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Databases

- Electronic and non-electronic
- Originally protected by copyright
- New 'database right' protects database
 - where a 'substantial investment in obtaining verifying or presenting the contents'
 - ► lasts for 15 years but can be refreshed
- Copyright still protects some databases.
 - F where element of intellectual creation

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Databases - cont'd

- Maker of the database is owner.
 - "person who takes the initiative". And assumes, the risk of investing.
- · Compare with copyright
- infringement of database right
 - extraction or re-utilisation of substantial part of the contents
 - · protects the contents not the form

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Trade Marks - what are they?

- Registered trade marks versus common law trade marks (adequacy of protection?).
- Indicators of origin.
- Capacity to distinguish central to their function
- Certain marks will be incapable of registration.
 - descriptive terms
 - generic ferms,

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Trade Marks - cont'd

- Applicant any person with a bona fide intention of using the mark
- ◆ Territorial nature of protection
 - but OTMO and the Madrid Protocol
- Examination
- Opposition
- Revocation and invalidity

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Trade Marks - Exploitation

- ◆ No time limit on protection.
- ◆ Renewal fees (every 10 years)
- Preventing infringement by use of the same or a similar mark on the same or similar goods/services
- Licensing

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Common themes

- Forms of property can be owned, assigned, licensed and mortgaged.
- Exploitation subject to competition law
- Remedies against infringement damages injunction, rights of delivery up etc.
- All are vulnerable to attack and may need to be defended vigorously → cost!

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Sur: service marks.